

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 VIOLETTA HOANG, et al.,
12 v.
13 REUNION.COM, INC.,
14 Defendant

No. C-08-3518 MMC

**ORDER DENYING DEFERRED PORTION
OF DEFENDANT'S MOTION TO STRIKE
AND FOR INVOLUNTARY DISMISSAL;
DENYING DEFENDANTS' MOTION FOR
SANCTIONS**

15 _____ /
16 By order filed October 20, 2009, the Court denied in part defendant Reunion.com,
17 Inc.s' "Motion to Strike Plaintiffs' Notice and for Involuntary Dismissal," specifically, the
18 request to strike plaintiffs' "Notice of Withdrawal of Second Amended Complaint and of
19 Plaintiffs' Decision to Stand on the First Amended Complaint Without Further Amendment,"
20 and deferred ruling on defendant's request for involuntary dismissal. By said order, the
21 Court also deferred ruling on defendant's "Motion for Sanctions Pursuant to 28 U.S.C.
22 § 1927." In both instances, the Court deferred ruling until it determined whether sufficient
23 grounds existed to justify reconsideration of the Court's December 23, 2008 order
24 dismissing the First Amended Complaint ("FAC") with leave to amend.

25 By separate order filed concurrently herewith, the Court has reconsidered and
26 vacated in part its December 23, 2008 order, and, in so doing, has denied defendant's
27 motion to dismiss the FAC. Accordingly, the Court now rules on the deferred motions.

1 Defendant seeks involuntary dismissal on the asserted ground that plaintiffs violated
 2 the Court's December 23, 2008 order by (1) seeking reconsideration of the dismissal,
 3 (2) filing a Second Amended Complaint ("SAC") that, according to defendant, remained
 4 deficient, and (3) withdrawing their SAC, leaving the FAC as the operative pleading. As
 5 discussed in the Court's order filed concurrently herewith, the Court has reconsidered its
 6 order dismissing the FAC, and has denied the motion to dismiss the FAC. Under such
 7 circumstances, involuntary dismissal is not warranted.

8 Accordingly, defendant's motion for involuntary dismissal is hereby DENIED.

9 Defendant's motion for sanctions is based on the argument that plaintiffs, in violation
 10 of 28 U.S.C. § 1927, have "vexatiously and unnecessarily multipl[ied]" the proceedings (see
 11 Def.'s Mot. for Sanctions, filed July 31, 2010, at 1:17), by "repeatedly spurn[ing] their
 12 opportunities to cure the defects the Court has identified [in its December 23, 2008 order]"
 13 (see id. at 5:17-18). "Sanctions pursuant to section 1927 must be supported by a finding of
 14 subjective bad faith." New Alaska Development Corp. v. Guetschow, 869 F.2d 1298, 1306
 15 (9th Cir. 1989). Prior to the Ninth Circuit's issuance of Gordon v. Virtumundo, Inc., 575
 16 F.3d 1040 (9th Cir. 2009), there existed no binding authority on the issue of whether, and, if
 17 so, to what extent, § 7707(b)(1) preempted state statutes prohibiting false statements in
 18 commercial e-mails. Moreover, no circuit court, to date, has addressed the primary issue
 19 presented herein, specifically, whether a state statute prohibiting the making of a materially
 20 false statement in a commercial e-mail, but not requiring a showing of actual reliance on
 21 such statement, is preempted. Under such circumstances, defendant has failed to show
 22 plaintiffs have acted in bad faith.

23 Accordingly, defendant's motion for sanctions is hereby DENIED.

24 **IT IS SO ORDERED.**

25
 26 Dated: March 31, 2010
 27
 28



MAXINE M. CHESNEY
United States District Judge